

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4172 of 1998

with

FIRST APPEAL No.4173 of 1998

Date of decision: 13-10-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARSING ANOPSINGH, UNARMED POLICE HEAD CONSTABLE

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for the appellants

CORAM : MR. JUSTICE S.K. KESHOTE

Date of decision: 13/10/98

ORAL JUDGEMENT

Both these appeals arise from the common judgment and decree dated 24th June, 1998 passed by the City Civil Court, Court No.22, Ahmedabad City. The facts in brief are that the appellants -plaintiffs are employees of the Police Department of the State of Gujarat. Appellant in First Appeal No.4127 of 1998 is holding the post of Unarmed Police Head Constable, whereas appellant of First appeal No.4173 of 1998 is holding the post of Unarmed Police Constable. At the relevant time they were working at Virsad Police Station, District Anand. During the course of patrolling duty they had arrested one Pashabhai and he was brought to the police station. It is the case of the appellants-plaintiffs that father and brother of the accused and other persons had assaulted the plaintiffs and rifle of Kalabhai Dhirabhai, who was accompanying the plaintiffs, was snatched. Said Kalabhai Dhirabhai has also filed suit being Civil Suit No.2733 of 1989, which has been decided under the common judgment.

2. Initially preliminary inquiry was conducted by the department against the appellants-plaintiffs; and they were found negligent in performing their duties. It was found that they were assaulted, but they did not properly resist the assault though they were well equipped. Therefore recommendations were made for holding departmental inquiry against the appellants-plaintiffs. Accordingly inquiry was conducted and prima facie the charge was found proved against them. Show cause notice was given to them for imposing penalty of removal from service. The appellants plaintiffs therefore filed Special Civil Application No.2688 of 1989 before this Court challenging the legality, propriety and correctness of the show -cause notice. In the said special civil application the following prayers were made:

"to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the order of removal based on show cause notice which is at Annexure-A by respondent No.1 in the interest of justice.

Pending admission, hearing and final disposal of the petition, be leased to stay the execution, implementation and operation of the order of removal that maybe passed by the first respondent in the interest of justice."

Both the appellants herein and the plaintiff of Civil Suit No.2733 of 1989 were petitioners in the said special civil application.

3. It is not in dispute that special civil application No.2688 of 1989 was withdrawn by the appellants- plaintiffs on 17th April, 1989. While dismissing the special civil application as withdrawn, this Court made observation that upon completion of the inquiry implementation of the order of punishment imposed shall be postponed for 15 days. This indulgence has been granted by this court on the request of the plaintiffs appellants. The plaintiffs - appellants , instead of waiting for final decision to be taken in the inquiry and any of penalty imposed against them, filed the present suits before the City Civil Court at Ahmedabad. In these suits the plaintiffs-appellants have challenged the very show cause notice dated 1-4-1989, which they had already challenged before this Court by filing special civil application No.2688 of 1989, which ultimately was withdrawn by them. The reliefs claimed in the special civil application and these suits are identical. Along with the civil suits, applications for grant of temporary injunction was also filed. It is no more in dispute that the civil court protected them by granting interim relief in their favour. I have my own reservation whether the civil court could have granted such interim relief in the matter where only show cause notice was given to the appellants-plaintiffs. In this regard reference may have to be made to the decision of the Supreme Court in the case of Executive Engineer, BHHB vs. Ramesh Kumar, reported in 1996(1) SCC 327. Be that as it may.

4. From the judgment of the trial court I find that the plaintiffs -appellants appear to have also manipulated the records of the court and made an attempt to see that the notice of motion is not placed for hearing before the court. I do not appreciate the way in which the matter has been taken by the counsel who appeared for the State of Gujarat in the suits. In one of the notice of motion when it was placed for final hearing, the counsel who appeared for the State Government, instead of contesting the same, has consented for making the rule absolute. Be that as it may. The suit has proceeded and ultimately the trial court found that the plaintiffs- appellants have concealed the material fact from the court that they have filed special civil application No.2688/1989 before this court against the show cause notice, which was withdrawn by them unconditionally. Taking it to be a serious matter, the

suits have been dismissed. Hence these first appeals before this court.

5. On the last date of hearing of these appeals the court prima facie found it to be a clear case where the police officers abused the process of the court for taking advantage for themselves. The appellants were directed to remain personally present in court today. Both the appellants are present in court. In the first session when these appeals were called out for hearing, Mr.M. B. Gandhi, learned counsel for the appellants, stated that the appellants may be permitted to withdraw these appeals or this court may dismiss the appeals. The matter was passed over for dictation of order. In second sessions when these appeals were called for hearing the learned counsel for the appellants was not present. The appellants have gone to call him, but for reasons best known to him he has not come in the court. Once the appeal is filed before this court, ordinarily it may be the right of the appellants to withdraw the same. But it is not the absolute right of the litigant. It is not the law that when prayer is made for withdrawal of the appeal this court has no other power except to grant the same. In a proper and appropriate case this court may decline to grant the prayer made by the appellant for withdrawal of the appeals, more so when this court prima facie feels that it is a case where the appellants have abused the process of the court. Not only that they have taken advantage of abusing the process of the court but they have kept the departmental inquiry against them freezed for considerable period of nine years.

6. I have considered the matter on merits and I am satisfied that the learned trial court is perfectly correct in declining to grant any relief to the plaintiffs - appellants. It is a case where the police officers have not only concealed facts but by concealing the material facts from the court they have managed to get interim relief in their favour, and permitted the departmental inquiry to remain in cold storage for about nine years. They have taken all the benefits of service and managed to continue on the respective posts though they have been charged for very serious misconduct.

7. I have been given out by the learned counsel for the appellants that after the dismissal of the suits the Department has completed the inquiry and the plaintiffs appellants have been given minor punishment. Be that as it may. It is not the matter here for consideration. But I am constrained to observe that the Police Department of the State of Gujarat seems to be very

liberal in the matter of giving penalty for the misconduct committed by its officers and employees. I have seen matters after matters in this court where the police constables are involved in illicit liquor business. The police constables are consuming liquor. I have also found at least in one case the report of the Director General of Police, Gujarat State, that the police officers upto the rank of Deputy Inspector General of Police are permitting people to run gambling dens. In that case also the Police Department placed under suspension only police constables or Sub Inspector or Inspector of the concerned Police Station, though higher officers were found involved in such serious matter. When special civil application was filed by the police constables, instead of suspending those higher officers, the Department has taken side with those officers and felt contented by revoking the order of suspension of the police constables. That matter is still under investigation, and appropriate order maybe passed by this court in those matters. I am stating these facts only to illustrate how the police officers in this State, who are expected to protect the rights of the citizens, are themselves involving in antisocial and anti national activities. Be that as it may. These appeals are wholly misconceived and the same are dismissed.

8. After going through the judgment of the learned Judge of the City Civil Court I am constrained to observe that that the City Civil Court also has taken this matter very lightly. Once it has come to its notice that the plaintiffs - appellants have abused the process of the court, the court should have taken appropriate action against them. I find prima facie from the facts of this case that the plaintiffs- appellants have abused the process of the court. Abuse of process of the court amounts to contempt of court. The plaintiffsappellants are present in court. They have been called upon by the court to show as to why they should not be punished for committing contempt of court by abusing the process of the court. They prayed for fifteen days' time to file reply to this notice. I grant them one month's time.

S.O. to 16-11-1998. The appellants are directed to remain personally present in court on the next date.

9. Looking to the facts of this case, and the fact that the appellants, who are police officers, have prima facie abused the process of the court which is equally also a very serious misconduct, pending this matter I do not consider it proper to continue them in service. The District Superintendent of Police, Kheda is directed to place under suspension Shri Amarsingh Anopsingh, Unarmed

Police Head Constable (Buckle No.658) from service forthwith. Similarly, District Superintendent of Police, Anand is directed to place under suspension Shri Jagnabhai Devabhai Sadat, Unarmed Police Constable (Buckle No.841) (New Buckle No.659) from service forthwith. Compliance of this order be reported to the court forthwith.

10. Additional Advocate General, Shri S.N. Shelat has been requested to Assist this court in this matter. He has given his consent to assist this court in the matter. Office is directed to furnish to Shri S.N. Shelat, a xerox copy of the appeal memo and copy of the judgment of the trial court. Office is directed to place papers of special civil application No.2688 of 1989 with these first appeals on the next date of hearing. Send for R & P of Civil Suits Nos.2734/89 and 2779/89 from the Court of City Civil Judge, Court No.22, Ahmedabad City.

13-10-1998 (S.K. KESHOTE,J)

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